

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

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COMCAST CABLE COMMUNICATIONS, LLC, et al.,	:	CIVIL ACTION NO. 12-0859
Plaintiffs	:	
	:	
v.	:	Philadelphia, Pennsylvania
	:	February 17, 2017
SPRINT COMMUNICATIONS COMPANY L.P., et al.,	:	9:40 o'clock a.m.
Defendants	:	
.	:	

JURY TRIAL - DAY 14
BEFORE THE HONORABLE JAN E. DUBOIS
SENIOR UNITED STATES DISTRICT COURT JUDGE

- - -

APPEARANCES:

For the Plaintiffs:	DANIEL J. GOETTLE, ESQUIRE DALE M. HEIST, ESQUIRE Baker & Hostetler, LLP Cira Centre, 12th Floor 2929 Arch Street Philadelphia, PA 19104-2891 WILLIAM T. HANGLEY, ESQUIRE REBECCA SANTORO MELLEY, ESQUIRE Hangley Aronchick Segal & Pudlin One Logan Square, 27th Floor Philadelphia, PA 19103 GEORGE MEDLOCK, ESQUIRE Comcast Cable Communications Chief Patent Counsel
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Laws Transcription Service
48 W. LaCrosse Avenue
Lansdowne, PA 19050
(610) 623-4178

APPEARANCES: (Continued)

For the Defendants: DAVID E. FINKELSON, ESQUIRE
 BRIAN C. RIOPELLE, ESQUIRE
 JUSTIN R. LOWERY, ESQUIRE
 McGuire Woods, LLP
 Gateway Plaza
 800 East Canal Street
 Richmond, VA 23219

 COLLEEN H. SIMPSON, ESQUIRE
 Harkins Cunningham, LLP
 4000 Two Commerce Square
 2001 Market Street
 Philadelphia, PA 19103

- - -

Audio Operator: Michael Cosgrove

Transcribed by: Geraldine C. Laws, CET
 Paula Curran, CET

(Proceedings recorded by For The Record electronic sound
recording; transcript produced by AAERT-certified
transcribers.)

1 (The following occurred in open court at 9:40
2 o'clock a.m.)

3 THE COURT: Good morning, everyone.

4 ALL: Good morning, your Honor.

5 THE COURT: Please be seated. We have one issue to
6 discuss, and that is the charge on obviousness. Who is going
7 to speak first? Mr. Riopelle.

8 MR. RIOPELLE: Your Honor, we have looked at it, we
9 actually did some research on it and it's our conclusion that
10 except for the objection that we've already put on the record
11 that the obviousness charge as given is fine to cover the two
12 issues that we were addressing yesterday, and that's because
13 further down into --

14 THE COURT: Let me turn there.

15 Okay.

16 MR. RIOPELLE: So for example in the one, two,
17 three, fourth paragraph, towards the end of the fourth
18 paragraph it talks about to combine the known elements. And
19 then in the paragraph numbered one it says using prior art
20 elements. In numbered paragraph three it says combining
21 elements. In four it says combining elements and in five it
22 says combinations of elements. So I believe it is covering
23 and the case law appears to treat this as covering a
24 combination of elements from separate pieces of prior art or
25 from prior art and something known to someone of ordinary

1 skill in the art.

2 THE COURT: Thank you.

3 MR. GOETTLE: Your Honor, Comcast is also fine with
4 the instruction. And in addition to what Mr. Riopelle just
5 pointed out, well we did go back and look at the Federal
6 Circuit Bar Association's rules and the ALTIA rules and what
7 you instructed the jury on yesterday is consistent with those
8 rules. And in addition to what Mr. Riopelle pointed out,
9 also on page 32 where they're scoping content of the prior
10 art instruction, we think between this your instructions have
11 covered what they need to cover.

12 THE COURT: All right. There are alternatives. The
13 Federal Circuit has really complicated, I think, the law
14 applicable to obviousness because there is authority
15 including an alternative instruction in the Federal Circuit
16 Bar Association Model Patent Jury Instructions, whereby the
17 jury makes findings of fact and the Judge decides the
18 obviousness issue.

19 There's agreement and I have no problem with the
20 charge as it's drafted.

21 I think what I'll do is call the jury in -- where's
22 Milahn? Tell them the charge is as we have given it to them
23 and we'll deliver the black notebooks. Better tell them that
24 they will have ordered lunch. Again remind them about the
25 schedule today, and tell them we want a note at 4:15 as to

1 what their intentions are tonight.

2 Do you want to bring the jury in?

3 MR. RIOPELLE: How about a note no later than 4:15?

4 THE COURT: Pardon me?

5 MR. RIOPELLE: How about saying a note no later than
6 4:15? I don't want to encourage them they have to stay until
7 4:15.

8 THE COURT: No.

9 MR. GOETTLE: Your Honor? Just while we're waiting
10 for the jury I just wanted to point out Mr. Hangley had a
11 doctor's appointment and that's why he's not here. I just
12 wanted to point out that he didn't just will-nilly not
13 appear.

14 THE COURT: Thank you.

15 (Jury enters the courtroom at 9:45 o'clock a.m.)

16 THE COURT: Good morning, everyone. Please be
17 seated.

18 After you left last night I talked to counsel again
19 about the charge. They thought about it overnight. I did,
20 too. And we've decided that it does not need anything else.
21 There will be no additional instructions on the law. Of
22 course if you have a question, as I've told you, you should
23 have the foreperson write the question out, submit it to the
24 person who will be by the jury room door and we'll answer it.

25 That means these three black notebooks you're

1 looking at will be provided to you. It includes the entire
2 charge. Again keep in mind that there's a table of contents,
3 make it easier for you to get from a question to the right
4 subject and then the instructions on that subject.

5 Schedule for today. Ms. Hull, has lunch been
6 ordered?

7 DEPUTY CLERK HULL: Lunch has been ordered to arrive
8 around 12:30.

9 THE COURT: Good, fine.

10 You'll begin your deliberations now. I'm not going
11 to set a schedule, but I think it's possible you'll reach a
12 verdict early in the afternoon. It's also possible that you
13 might not. If you haven't reached a verdict by 4:15 I want
14 you to send me a note. Your foreperson should send me a note
15 telling me what you want to do. The alternatives are go home
16 and come back on -- I hate to say this, but it would be
17 Tuesday because Monday is a legal holiday; stay and not have
18 dinner, and in that case if you miss a train or a bus or a
19 ride and need transportation, Ms. Hull is the person to talk
20 to. We don't want you hanging around train stations or bus
21 terminals late at night. We don't want you to have to wait.

22 The third alternative would be stay and have dinner.
23 As I told you and I'm smiling as I say this because I've seen
24 the dinners, you would not want to come back to the
25 courthouse for dinner in the future based on our dinners, but

1 at least it gives you something to eat. I hope you've been
2 getting breakfast. I'm getting a nod from Ms. Hull, that's
3 good.

4 So you're to begin your deliberations. Again if you
5 reach a verdict early afternoon, that's fine. You'll follow
6 the instructions on the verdict sheet. If you haven't
7 reached a verdict by 4:15, please send me a note telling me
8 what you want to do.

9 All right, is there anything else, Counsel? Mr.
10 Goettle?

11 MR. GOETTLE: No, your Honor.

12 MR. FINKELSON: No, your Honor.

13 THE COURT: Fine.

14 DEPUTY CLERK HULL: All rise.

15 (Jury exits the courtroom at 9:49 o'clock a.m.)

16 THE COURT: Be seated, everyone.

17 As I said, we're not going to require you to hang
18 around the courthouse, but we don't want to call 127 lawyers.
19 Who will be the contact people? Do we have your cell phone
20 numbers?

21 MR. FINKELSON: I believe you do, but I'll make sure
22 Ms. Hull has them before I go anywhere.

23 THE COURT: Where would you be thinking of going?

24 MR. FINKELSON: The 11th floor. (Laughter.) And
25 maybe just outside. I'm not going far.

1 THE COURT: Is something going on on the 11th floor,
2 or was that said in jest?

3 MR. FINKELSON: No, that's where our room is so it's
4 become our home away from home is down there. Ms. Hull has
5 set us up with two rooms down there which has worked out very
6 well. But I'm not going far, your Honor.

7 MR. GOETTLE: I'm going to go to the Constitution
8 Center. I'm kidding. We'll be right here. (Laughter.)

9 THE COURT: No, that's great. I bumped into Jeff
10 Rosen at the opera looking very relaxed. I was not looking
11 very relaxed. He is the CEO of the Constitution Center and
12 really, if you haven't seen it, it's really quite
13 spectacular.

14 MR. GOETTLE: I agree.

15 THE COURT: It's certainly worth the trip.

16 All right. Well, we'll get your contact numbers and
17 we'll call you if they have any questions and certainly if
18 they have a verdict.

19 All right, is there anything else we have to do?

20 MR. GOETTLE: No, your Honor.

21 MR. FINKELSON: No, your Honor. Thank you.

22 THE COURT: All right then we're in recess. I'm
23 going to stay up here and try to clean up (laughter) a little
24 bit.

25 (Recess taken from 9:51 o'clock a.m. until 3:56

1 o'clock p.m.)

2 THE DEPUTY CLERK: All rise.

3 THE COURT: Good afternoon, everyone.

4 ALL: Good afternoon, your Honor.

5 THE COURT: Be seated, please. I've been told the
6 jury has reached a unanimous verdict. So, we will call the
7 jury in.

8 (Pause.)

9 THE DEPUTY CLERK: All rise.

10 (Jury enters.)

11 THE COURT: Be seated, everyone. I have been told
12 that you've reached a unanimous verdict. Good and has the
13 foreperson completed the verdict sheet in accordance with
14 instructions? Ms. Hull, will you retrieve the verdict sheet.
15 Thank you.

16 (Pause.)

17 THE COURT: All right, you've answered all of the
18 questions in accordance with my instructions. Let the
19 verdict be recorded, Ms. Hull.

20 THE DEPUTY CLERK: Members of the jury, please rise.
21 Members of the jury, have you agreed upon your verdict based
22 on the verdict slip from the Court?

23 JURORS: Yes.

24 THE DEPUTY CLERK: The jury unanimously agrees to
25 the following verdict.

1 Question Number 1, Did Comcast prove by a
2 preponderance of the evidence that Sprint had infringed any
3 of the filing claims of the '870 Patent by providing SMS and
4 MMS messaging service other than Syniverse Picture Mail,
5 Claim 1?

6 THE FOREPERSON: Yes.

7 THE DEPUTY CLERK: Claim 7?

8 THE FOREPERSON: Yes.

9 THE DEPUTY CLERK: Claim 113?

10 THE FOREPERSON: Yes.

11 THE DEPUTY CLERK: Question 2, did Sprint prove by
12 clear and convincing evidence that any of the following
13 claims of the '870 Patent are invalid as anticipated by a
14 single prior art reference, Claim 1?

15 THE FOREPERSON: No.

16 THE DEPUTY CLERK: Claim 7?

17 THE FOREPERSON: No.

18 THE DEPUTY CLERK: Claim 113?

19 THE FOREPERSON: No.

20 THE DEPUTY CLERK: Did Sprint --

21 THE COURT: Question 3.

22 THE DEPUTY CLERK: Question 3, I'm sorry. Did
23 Sprint prove by clear and convincing evidence that any of the
24 following claims of the '870 Patent are invalid as obvious at
25 the time of the invention to a person of ordinary skill in

1 the art. Claim 1?

2 THE FOREPERSON: No.

3 THE DEPUTY CLERK: Claim 7?

4 THE FOREPERSON: No.

5 THE DEPUTY CLERK: Claim 113?

6 THE FOREPERSON: Yes.

7 THE DEPUTY CLERK: Question 4, what sum of money, if
8 any, do you find that Comcast has proven by a preponderance
9 of the evidence is adequate to compensate Comcast for
10 Sprint's infringement of the '870 Patent?

11 THE FOREPERSON: \$1.5 million.

12 THE DEPUTY CLERK: Question 5, is the sum of money
13 identified in your answer to Question 4 the total sum an
14 ongoing royalty for messages sent or received through
15 September 30, 2016?

16 THE COURT: Or -- well you have to check one.

17 THE DEPUTY CLERK: It didn't --

18 THE COURT: Or a one-time lump sum royalty for the
19 life of the '870 Patent. Which line did you check?

20 THE FOREPERSON: A one-time.

21 THE COURT: Read the whole thing, please.

22 THE FOREPERSON: A one-time, lump sum royalty for
23 the life of the '870 Patent.

24 THE COURT: Thank you. And then you signed the
25 verdict sheet as the foreperson and dated it, is that

1 correct?

2 THE FOREPERSON: Yes, your Honor.

3 THE COURT: Thank you. Will you retrieve the
4 verdict sheet, please, Ms. Hull?

5 THE DEPUTY CLERK: Yes.

6 THE COURT: And you may be seated, ladies and
7 gentlemen. Does either party have a request for polling?

8 MR. HANGLEY: Yes, your Honor.

9 THE COURT: All right. It's customary, ladies and
10 gentlemen, for the parties to ask each juror whether the
11 verdict read by the foreperson is their verdict and we're
12 going to do that now with respect to each of you. Ms. Hull?

13 THE DEPUTY CLERK: Will each juror rise as I state
14 your number, please? Juror Number 1, do you agree with the
15 verdict as stated by the foreperson?

16 JUROR NO. 1: Yes.

17 THE DEPUTY CLERK: Thank you. Juror Number 2, do
18 you agree with the verdict as stated by the foreperson?

19 JUROR NO. 2: Yes.

20 THE DEPUTY CLERK: Thank you. Juror Number 3, do
21 you agree with the verdict as stated by the foreperson?

22 JUROR NO. 3: Yes.

23 THE DEPUTY CLERK: Juror Number 4, do you agree with
24 the verdict as stated by the foreperson?

25 JUROR NO. 4: Yes.

1 THE DEPUTY CLERK: Thank you. Juror Number 5, do
2 you agree with the verdict as stated by the foreperson?

3 JUROR NO. 5: Yes.

4 THE DEPUTY CLERK: Juror Number 7, do you agree with
5 the verdict as stated by the foreperson?

6 JUROR NO. 7: Yes.

7 THE COURT: Juror Number 8, do you agree with the
8 verdict as stated by the foreperson?

9 JUROR NO. 8: Yes.

10 THE DEPUTY CLERK: And Juror Number 9, is the
11 verdict stated by you, here in open court, your true and
12 correct verdict?

13 JUROR NO. 9: Yes.

14 THE DEPUTY CLERK: Thank you.

15 THE COURT: Thank you. Let the verdict be recorded.

16 THE DEPUTY CLERK: Members of the jury, please rise.
17 Members of the jury, hearken to your verdict as the Court has
18 recorded it in the issue joined in Civil Action Number 12-
19 859, wherein Comcast Cable Communications, LLC, as plaintiff
20 and Sprint Spectrum, LP is defendant, you answered the
21 questions as follows:

22 Question Number 1, did Comcast prove by a
23 preponderance of the evidence that Sprint has infringed any
24 of the following claims of the '870 Patent by providing SMS
25 and MMS messaging through messaging servers other than

1 Syniverse Picture Mail. For Claim 1, yes. For Claim 7, yes.
2 And Claim 113, yes.

3 Question Number 2, did Sprint prove by clear and
4 convincing evidence that any of the following claims of the
5 '870 Patent are invalid as anticipated by a single prior art
6 reference? For Claim 1, no. For Claim 7, no. Claim 113,
7 no.

8 Question Number 3, did Sprint prove by clear and
9 convincing evidence that any of the following claims of the
10 '870 Patent are invalid as obvious at the time of the
11 invention to a person of ordinary skill in the art? Claim 1,
12 no. Claim 7, no. Claim 113, yes.

13 Question 4, what sum of money, if any, do you find
14 that Comcast has proven by a preponderance of the evidence is
15 adequate to compensate Comcast for Sprint's infringement of
16 the '870 Patent? \$1.5 million.

17 Lastly, question 5, is the sum of money identified
18 in your answer is a one-time lump sum royalty for the life of
19 the '870 Patent? And so say you all?

20 JURORS: Yes.

21 THE COURT: Thank you very much. You may be seated.
22 Are there any applications or motions that the parties seek
23 to advance at this time? I don't see the need for any.

24 MR. HANGLEY: None at this time, your Honor.

25 MR. FINKELSON: None at this time, your Honor.

1 THE COURT: Fine. Well, it's been a long three
2 weeks. You've heard a lot of evidence and it was very
3 technical and very complicated and you paid rapt attention.
4 I watched you as we proceeded through the trial and there
5 were no times, that I observed, when you were not doing
6 exactly what was expected of you and that is listening to the
7 evidence, trying to absorb it and as you left for your
8 deliberations, I was convinced that you would take your jobs,
9 your duties very seriously and endeavor to reach a verdict.
10 And you've done all of that, you've done what was expected of
11 you and you should feel very good about that.

12 We read a lot about litigation, about cases that are
13 filed, but until you serve on the jury, you really don't know
14 how the system works. And now you know how the system works
15 and you learned it, I might say, in a case in which the
16 learning process had to be very, very difficult. And you
17 should feel very good about all of that.

18 I told you during the trial that you could not
19 discuss the case with anyone at home. And now, of course,
20 you may do so. I encourage you to discuss the case from the
21 procedural perspective. You don't have to discuss the
22 merits, but you can. But I encourage you do discuss the
23 process with the folks at home, because very few people know
24 anything other than what we see on television when it comes
25 to cases that are tried in Federal and State Courts. You've

1 be part of it. You've experienced jury selection, as you've
2 heard the presentation of evidence. And I think it's safe to
3 say the presentation of this rather complicated case was
4 about as good as it gets. I think the lawyers did their very
5 best to make certain that the evidence was presented in a way
6 that was as easy to understand as you could make it and
7 that's a difficult chore.

8 I thought the lawyering on both sides was as good as
9 I've seen in any case in which I've presided. And I've
10 presided in a number of cases. I've been on the bench for
11 quite some time.

12 When discussing the case with others and again, this
13 is your call, you don't have to and no one is permitted to
14 ask you, unless you agree, is permitted to ask you about how
15 you reached your verdict. But if you talk about the merits
16 of the case, I urge you, not ordering you, I urge you to
17 respect the privacy of the other members of the jury. You
18 certainly can talk about how you voted and why you voted.
19 But I urge you to respect the privacy of the comments made by
20 other jurors.

21 Now, I haven't seen any reporters in the courtroom,
22 but when the verdict is announced, they might very well come
23 calling. Either by telephone or e-mail or whatever and you
24 certainly may talk to them. But you can also say no and they
25 know that if you say no, that's the end of the discussion.

1 You do not have to explain your verdict to anyone.

2 And now, my thanks and the thanks of all of my
3 colleagues and the parties in this case for your service.
4 You gave up three weeks. I hope it's been an interesting
5 experience. I'm going to, as soon as I finish a few details
6 with counsel, among other things, I've got to get rid of
7 hundreds of exhibits that are sitting in the corner that we
8 haven't had need to look at. But the bottom line, I want to
9 come in and talk to you, so unless you have something urgent-
10 urgent to do, wait just a few minutes. It will take me just
11 a few minutes in the courtroom and then I will come in and
12 talk to you. If you wish to talk to counsel, they will
13 remain in the courtroom. But that's your call and there are
14 two ways out of your jury room. The straight way, which
15 doesn't bring you into the courtroom, you can just leave. Or
16 you can come into the courtroom and talk to counsel. Your
17 call.

18 All right, with that, Ms. Hull, we will release the
19 jury, again, with my thanks and the thanks of counsel.

20 THE DEPUTY CLERK: All rise.

21 (Jury excused.)

22 THE COURT: Be seated, everyone. I'm not going to
23 comment on the verdict. They certainly got there in about
24 six hours. They started deliberating at 10:00 o'clock. I
25 really think they absorbed what you presented as best they

1 could. And I don't know what I can expect in the future, but
2 I remind you that to me, at least, less is more and I shudder
3 to think about the pile of papers that you can generate with
4 about 30 or 40 of you and only two of us. But I encourage
5 you, if you can see your way clear, to skip the next step in
6 this court and if you have any further proceedings, that you
7 try another court, the one that sits -- I think I'm going
8 south. No, I'm not, south is that way -- the one that sits
9 in Washington.

10 I really meant what I said about the way the case
11 was tried. It was really a pleasure and gave me an
12 opportunity to meet some fine new lawyers and to pick on
13 Hangley, because we've known one another for a long, long
14 time. And I think the lawyering was just superb.

15 MR. FINKELSON: Thank you, your Honor.

16 MR. RIOPELLE: Thank you.

17 MR. GOETTLE: Thank you.

18 THE COURT: Lesser lawyers could not have begun to
19 present this case. I don't think I could have presented it
20 the way, well, I'm going to leave Hangley out of it. The
21 way, because Hangley presented the issue of how exhibits
22 should be handled and that was rather esoteric, but you guys
23 just did a superb job and I commend you for that.

24 I don't have need for the boxes. I learned one
25 thing during the trial. I'm not going to order routinely, at

1 least, two copies of all exhibits. I think the way you
2 presented the case didn't require that, at all. And I
3 apologize to the people who spent as much time as I know was
4 spent in putting together all of these exhibits and these
5 filings. You don't have to get them out of here today or
6 Monday, which is a legal holiday, but sooner is better than
7 later. We have the exhibits books that you gave us for each
8 witness. I don't think we have need for that, so we will
9 return them. I don't think -- okay, we will return them.

10 As a matter of fact, are both sets of exhibits
11 there, Comcast and Sprint's?

12 MR. FINKELSON: Yes, your Honor.

13 MR. HANGLEY: Yes.

14 THE COURT: All right, well, we'll put the exhibit
15 books over there and Comcast will take its and Sprint will
16 take its. Now, is there anything else we need do at this
17 time?

18 MR. HANGLEY: On a personal note, your Honor, first
19 of all, thank you on behalf, I'm sure, of all of us, for the
20 kind remarks. Second, I know that both arguing counsel have
21 already thanked the jury for their hard work. I think that
22 has some more genuineness to it when it comes after the
23 verdict. There may be things that are raised again as issues
24 in other forums or this forum, but one thing I think we're
25 all clear on, this was a jury that deserves to be thanked for

1 working as hard as they did and coming the distances that
2 they did. And as somebody who plows these fields regularly,
3 I was really totally impressed with the way that they
4 conducted themselves. And I ask you to tell them that on
5 behalf, I think, of all of us.

6 THE COURT: Well, I will and I'm certainly going to
7 invite them, after I spend a few minutes with them, to chat
8 with you, but that's pretty much their call. I find that
9 some do, many don't, but I'll leave that to them.

10 Mr. Goettle, is there anything you wish to add?

11 MR. GOETTLE: I know that the parties have put a
12 tremendous burden on the Court and everybody here involved,
13 so we do very much appreciate all the hard work that you have
14 put in, in this case. We really do appreciate it.

15 THE COURT: Oh, you mean the two or three months
16 that we've spent on this case?

17 MR. GOETTLE: Yes, the just two or three months,
18 yes.

19 MR. RIOPELLE: Mr. Peterson told me he's going to
20 try to become a patent lawyer in his new firm.

21 THE COURT: I missed that.

22 MR. HANGLEY: Because it's long-term employment,
23 right?

24 THE COURT: Oh, my, well, it really was -- when it's
25 over you can reflect on it and it was a real learning

1 experience. I don't want to let the word be out that I try
2 patent cases, because I'm not looking forward to another one
3 like this anytime soon. But it was quite challenging and
4 well-presented. Mr. Finkelson, anything you wish to --

5 MR. FINKELSON: I would just echo Mr. Goettle's
6 comments. We appreciate all of the Court's courtesies and
7 all of the Court's work that you put into this, to you and
8 your entire team. It's really, it's been a pleasure for us.

9 THE COURT: My entire team, you're looking at it.

10 MR. RIOPELLE: Well, Mr. Cosgrove --

11 MR. FINKELSON: You keep saying team. But when the
12 binders came out, I saw a few other people back there, too.

13 THE COURT: No, they're spectators and they're still
14 in the courtroom. They're going to come with me into jury
15 room.

16 MR. FINKELSON: But we do extend our thanks to you.
17 We do.

18 THE COURT: Thank you. Mr. Riopelle?

19 MR. RIOPELLE: Yes, your Honor, I would like to
20 extend my personal thanks to you for the accommodation you
21 gave to me and my family during this case and it was very
22 much appreciated.

23 THE COURT: Well, I don't want to minimize that, but
24 that was easiest decision I had to make.

25 MR. RIOPELLE: I appreciate it, thank you.

1 THE COURT: Well, our sincere condolences. I can't
2 imagine how, with all the work you had to do, how a family
3 tragedy such as you experienced, didn't impact your thought
4 process and your drive and it didn't show at all. And again,
5 our condolences on the loss of your mother-in-law. And Ms.
6 Simpson, who wrote that great letter.

7 MS. SIMPSON: No further comments.

8 THE COURT: But that was the letter that resolved a
9 number of problems, so, it really worked and I thank you for
10 that. Okay, I'm going off the bench.

11 THE DEPUTY CLERK: All rise.

12 (Court adjourned 4:18 o'clock p.m.)

13 * * *

CERTIFICATION

I hereby certify that the foregoing is a correct transcript from the electronic sound recording of the proceedings in the above-entitled matter.

S:/Geraldine C. Laws, CET
Laws Transcription Service

Date 2/21/17